THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18858 OF 2003

Date: 07.07.2006

Between:

V. Venkateshwarlu and two others.

... petitioners.

And

The Sub-Divisional Police Officer, Jangaon, Warangal District and another.

...

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18858 OF 2003

ORDER:

Seeking to declare the action of the respondents, in seizing the tractor and trailor bearing Nos. AP 36 U 8242 and 8243, the Motor Cycle bearing No. AP 36 J 475, 30 quintals of Jaggery and 5 quintals of Alum, as illegal and arbitrary and to set aside the proceedings in Cr.No. 64 of 2003 of Palakurthy Police Station, the present writ petition is filed.

Facts, as stated in the affidavit, are that the 1st petitioner herein is the owner of tractor and trailor and is plying the said vehicle on hire. The 3rd petitioner is carrying on business in the purchase and sale of jaggery and other kirana products in the name and style of M/s. Ambika Traders at Palakurthy village. It is stated that the 3rd petitioner purchased 100 quintals of jaggery from M/s. Yada Ramulu & Sons, Kamareddy under bill dated 11.06.2003 and paid Agricultural market fees for the jaggery purchased under receipt dated 11.06.2003. The 3rd petitioner transported jaggery under way bill dated 11.06.2003 to his shop. The 2nd petitioner purchased jaggery of 30 quintals from the 3rd petitioner under bill dated 15.08.2003. The 3rd petitioner is said to

have engaged the 1st petitioner's tractor and trailor for transportation of jaggery and alum to the shop of the 2nd petitioner. While proceeding to the village of the 2nd petitioner, the respondent seized the vehicle on the allegation that transportation of jaggery was not supported by bills and permit and that the driver had failed to produce the necessary documents in this regard. The 3rd petitioner's Motor Cycle was also seized. It is the case of the petitioner that despite the documentary evidence regarding jaggery and alum being purchased, the tractor and trailor along with jaggery and alum and Motor Cycle was seized.

Sri A. Prabhakar Rao, learned Counsel for the petitioners, would contend that there is no prohibition of sale, purchase and transport of alum and jaggery, that neither a transport permit nor a licence is required for transportation or for carrying on business in these products. Learned Counsel would refer to Section 45 of the A.P. Excise Act to contend that it is only when an offence has been committed would the authorities be entitled to confiscate the vehicle and the goods therein. Learned Counsel would submit that since no offence has been committed by the petitioner, much less one under Section 34(e) of the A.P. Excise Act, the action of the respondents in seizing the vehicles and goods therein is patently illegal. Learned Counsel would place reliance on the judgment of this Court in **Ulli Bhaskar Vs. State of A.P.**[1] wherein this Court held as under:

"…….**As rightly contended by the learned Counsel for the petitioner, possession of either black jaggery and/or alum, *per se*, is not an offence either under the provisions of Prohibition Act or Excise Act, because neither of them, as such, are intoxicants, as defined by the Excise Act.** As per Section 34(e) of the Excise Act, using, keeping or being in possession of any materials, stills, utensils, implements or apparatus

whatsoever, for the purpose of manufacturing any intoxicant other than toddy is an offence. So, it is clear that possession must be "for the purpose of manufacturing of an intoxicant". It is well known that there are four stages in the commission of an offence, i.e., (i) forming an intention to commit the offence, (ii) marking preparations therefore, (iii) making an attempt to commit the offence and (iv) actually committing the offence. Since Section 34(e) of the Excise Act speaks about the person being in possession "for the purpose of manufacturing an intoxicant", it is clear that the offence is committed only when 'manufacturing' is going on, and not before the manufacture, because even to constitute an attempt, the act must revel with reasonable certainty, in conjunction with other facts and circumstances, and not necessarily in isolation, an intention, as distinguished from mere desire or object, to commit a particular offence (see State of Maharastra Vs. Mohd. Yakub, AIR 1980 SC 11111 at 1117 and 1118). It is also relevant to mention that in Malkiat Singh Vs. State of Punjab, AIR 1970 SC 713, the Supreme Court held that the test for determining whether an act of a person constitutes an attempt or preparation is to see whether the overt acts, already done, are such that if the person changes his mind and does not proceed further the acts already done are harmless or not. **Therefore, being in possession of black jagggery and alum, even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act an offence under Section 34(e) is committed by a person when he is using the material "for purpose of manufacturing" an intoxicant. So, overt act of making preparation for manufacture of an intoxicant (i.e., arrack) with the material is the sine qua non for the act to constitute an offence under Section 34(e) of the Excise Act. In view thereof sale of black jaggery and alum either together or separately, with or without knowledge that the person to whom they are being sold, is likely to use them for the purpose of manufacturing illicit arrack, is not an offence under Section 34(e) of the Excise Act, because neither black jaggery nor alum, when sold jointly or separately, are intoxicants as defined in the Excise Act.** The purpose for which he is purchasing the goods from a vendor need not be disclosed by the purchaser to the vendor, and even if the purchaser discloses that he has an intention to manufacture arrack from the goods purchased by him, the vendor cannot be said to have committed an offence under Section 34(e) of Excise Act, because as stated above, neither alum nor black jaggery are intoxicants either by separately or when they are mixed. They at best are raw materials from which arrack can be prepared. **When sale of black jaggery and/or alum, for whatever purpose, is not made an offence by the Excise Act or Prohibition Act, the vendor of black jaggery and/or alum would not be committing an offence under Section 34(e) of Excise Act, when he sells them to a person even with a specific knowledge that the vendee is likely to manufacture illicit arrack**

by making use of those articles." (emphasis supplied)

As has been held by this Court in the aforesaid judgment, when sale of black jaggery and/or alum for whatever purpose, is not made an offence by the Excise Act or Prohibition Act, the vendor of black jaggery and/or alum would not be committing an offence under Section 34(e) of Excise Act. In view of the law laid down in **Ulli Bhaskar**[1], the petitioners herein, in transporting alum and black jaggery in their vehicle cannot be said to have committed an offence under Section 34(e) of the A.P. Excise Act. Since the petitioners cannot be said to have committed an offence under Section 34(e) of the A.P. Excise Act, the proceedings in Cr.No. 64 of 2003 of Palakurthy Police Station, wherein the petitioners are alleged to have committed an offence under Section 34(e), is liable to be quashed.

The writ petition is allowed. However, in the circumstances, without costs.

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Date: 07.07.2006 RAMESH RANGANATHAN, J

MRKR

[1] 2004(1) ALD (Crl.) 561 (A.P.)